

Court File Number: MC-568-13
No du dossier:

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

The Estate of Aurore LeBlanc, per
Executor Reno LeBlanc,

- and -

Estelle Dupuis, per Litigation
Guardian Diane LeBlanc,

- and -

Janice Dupuis, per Litigation
Guardian Diane LeBlanc,

PLAINTIFF

-and-

Gary Pellerin,

- and -

The City of Moncton, a body
corporate

DEFENDANT

NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED
(FORM 16A)

TO: Gary Pellerin
Greater Moncton

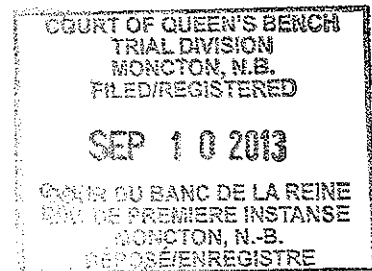
City of Moncton
655 Main Street
Moncton, NB E1C 1E8

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE
MONCTON

ENTRE:



DEMANDEUR

- et -

DEFENDEUR

AVIS DE POURSUITE ACCOMPAGNE D'UN
EXPOSE DE LA DEMANDE
(FORMULE 16A)

DESTINATAIRE:

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defense in the form prescribed by the Rules of Court and serve it on the plaintiff or his lawyer at the address shown below and, with proof of such service, file it in this Court Office, together with the filing fee of \$50.00

- (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action with Statement of Claim Attached, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- (c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you; JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

PAR LE DEPOT DU PRESENT A VIS DE POURSUITE ACCOMPAGNE D'UN EXPOSE DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ETE ENGAGEE CONTRE VOUS.

Si vous desirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec une preuve de sa signification:

- a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou
- b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou
- c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the plaintiff intends to proceed in the **English** language; and
- (c) your Statement of Defence must indicate the language in which you intend to proceed.

Where the claim is for a liquidated demand or to recover a debt, with or without interest, inserts the following notice:

If you pay to the plaintiff or his lawyer the amount of his claim, together with the sum of \$100 for his costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Anne Richard, Clerk of the Court at Moncton, N.B., on the 10th day of September, 2013.

S.L. copie Anne M. Richard

Legal Officer/Conseillère juridique

Clerk of the Court
Judicial District of Moncton

Court of Queen's Bench of New Brunswick /
Cour du Banc de la Reine du Nouveau-Brunswick
Client Services-Client Services /

Services aux tribunaux-Services à la clientèle

Box 5001 / C.P. 5001

145 Assumption Blvd., 1st Floor / 145, boul. Assomption, 1^{er} étage
Moncton, NB E1C 8R3

- a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- b) la demanderesse a l'intention d'utiliser la langue **Anglais**; et
- c) l'expose de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

Si la demande a pour objet la perception d'une somme déterminée ou le recouvrement d'une créance avec ou sans intérêts, ajouter le paragraphe suivant:

Si, dans le délai accordé pour la signification et le dépôt de l'expose de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pouvez demander à la cour de rejeter l'action.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par de la Cour à Moncton, N.B., ce ____ jour de _____ 2013.

(Greffier)

Sceau de la Cour

STATEMENT OF CLAIM

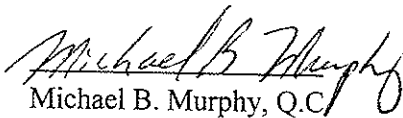
1. The plaintiff, the Estate of Aurore LeBlanc, is represented by the executor of the Will of Aurore LeBlanc, Reno LeBlanc, whose residence is Memramcook, New Brunswick.
2. The plaintiff, Estelle Dupuis, is the daughter of the late Aurore LeBlanc, and is represented by her litigation guardian Diane LeBlanc, both residing at 860 Royal Road, Memramcook, NB, E4K 1Y8.
3. The plaintiff, Janice Dupuis, is the daughter of the late Aurore LeBlanc, and is represented by her litigation guardian Diane LeBlanc, both residing at 860 Royal Road, Memramcook, NB, E4K 1Y8.
4. The defendant, Gary Pellerin, is a resident of Greater Moncton, and was at all material times hereto a bus driver in the employ of the City of Moncton which did business under the business name and style "Codiac Transpo"
5. The defendant, City of Moncton, is a body corporate duly incorporated and recognized by regulation 85-6 under the *Municipalities Act*, RSNB 1993, c M-22, and as an office at 140 Millennium Drive, in the City of Moncton, County of Westmorland, and was at all material times hereto the owner of the bus in question.
6. The plaintiffs state and the fact is that on the January 20, 2012 at approximately 1:15 pm the late Aurore LeBlanc was crossing at King Street and Main Street in the city of Moncton as a pedestrian, with the pedestrian crosswalk signal indicating to walk, when suddenly and without warning she was struck by a turning bus owned by the defendant, City of Moncton, and driven by the defendant, Gary Pellerin. Aurore LeBlanc was killed at the scene.
7. The plaintiffs state and the fact is that the defendant Gary Pellerin was negligent as follows:
 - a. He carelessly and negligently failed to maintain any or proper control over the bus;
 - b. He drove the bus without due care and attention and reasonable consideration for other persons using the highway and especially the pedestrian Aurore LeBlanc contract to Section 346(1)(a)(n)(b) of the *Motor Vehicle Act* RSNB 1993, c. N-17;
 - c. He carelessly and negligently failed to keep a proper lookout for others on the highway including pedestrians when he knew or ought to have known of lighting conditions, blind spots, and the likelihood of pedestrians crossing especially under the circumstances of a crosswalk positive sign for pedestrians.
 - d. They he operated the bus at a speed that was not reasonable nor prudent under the conditions then prevailing and having regard to the actual and potential hazards contrary to section 140(2) of the *Motor Vehicle Act* (supra);

- e. That he failed to yield the right-of-way to pedestrians;
 - f. That he knew or ought to have known that the bus had inadequate breaks contrary to Section 233 of the *Motor Vehicle Act* (supra);
 - g. That he drove the bus in a reckless manner, and did not execute the turn within the lanes and areas as prescribed;
 - h. That he failed to take evasive action and time to avoid the accident;
8. The plaintiffs rely, in the alternative, upon the *Contributory Negligence Act* RSNB c C-19, as amended.
 9. The plaintiffs' further state and the fact is that the defendant City of Moncton is responsible for the actions of the defendant Gary Pellerin by virtue of Section 267(1) of the *Motor Vehicle Act* (supra).
 10. The plaintiffs' further state and the fact is that the defendant, City of Moncton, knew or should have known of "blind spots" created by improper mounting of mirrors, or the mirrors themselves, on the bus in question.
 11. The plaintiffs' further state and the fact is that the defendants were negligent by the planning and operation of the systemic and systematic time intervals for pedestrians crossing, when relying upon the traffic lights at that location.
 12. The plaintiffs' further state and the fact is that the City of Moncton knew or ought to have known of the dangers of shadows, sun level in the eyes of the driver, and did not do anything to preclude dangers or potential hazards arising therefrom.
 13. The plaintiffs' further state and the fact is that the late Aurore LeBlanc left in her wake two daughters, both of whom resided with her, being the plaintiffs Estelle and Janice Dupuis, per litigation guardian, and that these two children lost the care, guidance, and companionship of their mother, and further lost all disposable income available to them for their education, health and welfare from their late mother.
 14. The plaintiff's further state and the fact is that family members took in the plaintiffs Estelle and Janice Dupuis and have incurred significant expenses, for which the defendants are liable, in order to care for these children when same would have been done by their mother had she not met an early demise.
 15. The plaintiffs' further state and the fact is that the estate of Aurore LeBlanc lost disposable income, pension benefits, and further accumulation of estate value by this early demise.
 16. The plaintiffs further state and the fact is that Estelle and Janice Dupuis, plaintiffs, have incurred expenses, past, present, and future for their care, education, guidance, and essential needs.
 17. The plaintiff, the estate of Aurore LeBlanc, further states and the fact is that expenses were incurred on the probate of the estate of the late Aurore LeBlanc for which they claim both legal costs and

18. There the plaintiffs claim jointly against the defendants, jointly and severally, as follows:

- 1) Special damages in an amount to be determined by this Honourable Court;
- 2) General damages for loss of care, guidance, and companionship for the plaintiff Estelle Dupuis and the plaintiff Janice Dupuis;
- 3) Pre-judgment interest;
- 4) Costs of this action;
- 5) HST on costs of this action;
- 6) Interest after judgment until payment;
- 7) Such further and other relief as this Honorable Court deems just and expedient.

Dated at Moncton, New Brunswick this 5 day of Sept, 2013.



Michael B. Murphy, Q.C.
Solicitor for the Plaintiffs
Estate of Aurore LeBlanc
Janice Dupuis
Estelle Dupuis

23 High Street,
Moncton, NB E1C 6B4

Tel: 506-854-5157

Fax: 506-854-1608

Email: mike@murphykelly.ca